Memorandum

Andy Schor
Michigan Municipal League

To: House Government Operations Committee

From: Andy Schor

Date: December 4, 2006

Re: Blight Legislation – HB 6638 and HB 6639

While the Michigan Municipal League has not taken an official position on the blight legislation being considered today, our members request three amendments to these bills. Below are the amendments requested, and the justification for each amendment. I am available to discuss these amendments at any time, and look forward to working with the Committee on this legislation. I can be reached at any time directly at 517 908-0300 or by cell phone at 517 256-3395.

HB 6638 - Neighborhood Area Improvements Act
(discharged to the floor)

1. The MML requests changing the language "Qualified local unit of government" to "municipality" or some other term.
2. The MML requests elimination of the words "fee simple" in Section 4 (1), which requires title to blighted property to be "fee simple" when acquired.
3. The MML requests removing the following newly added language in Sec. 4 (2) that state "with regards to blighted property, the" and instead, adding language on line 24 after "condemnation" to say "PROVIDED, HOWEVER, THAT ANY PROPERTY ACQUIRED UNDER POWER OF EMINENT DOMAIN SHALL BE ACQUIRED FOR A PUBLIC USE UNDER THE STATE CONSTUITUTION OF 1963 AND THE LAWS OF THE STATE AND SHALL NOT BE ACQUIRED FOR TRANSFER TIO A PRIVATE ENTITY FOR THE PURPOSE OF ECONIMUC DEVELOPMENT OR ENHANCEMENT OF TAX REVENUES". The new paragraph in the bill would read as follows:

   Sec. 4 (2) The local legislative body may institute and prosecute proceedings under the power of eminent domain in accordance with the laws of the state or provisions of any local charter relative to condemnation; **PROVIDED, HOWEVER, THAT ANY PROPERTY ACQUIRED UNDER POWER OF EMINENT DOMAIN SHALL BE ACQUIRED FOR A PUBLIC USE UNDER THE STATE CONSTITUTION OF 1963 AND THE LAWS OF THE STATE AND SHALL NOT BE ACQUIRED FOR TRANSFER TO A PRIVATE ENTITY FOR THE PURPOSE OF ECONOMIC DEVELOPMENT OR ENHANCEMENT OF TAX REVENUES.** ~~The purposes contemplated by this act are hereby declared to be public purposes within the meaning of the constitution, state laws and charters relative to the powers of eminent domain.~~ **A** resident owner in a development area may **NOT** be dispossessed after condemnation under the provisions of this act until other adequate housing accommodations are available, to the people displaced.

HB 6639 – Blighted Area Rehabilitation Act

1. The MML requests changing the language "Qualified local unit of government" to "municipality" or some other term.
2. The MML requests elimination of the words "fee simple" in Section 5 (1), which requires title to blighted property to be "fee simple" when acquired.
3. The MML requests removing the following newly added language in Sec. 5 (2) that state "with regards to blighted property, the" and instead, adding language on line 24 after "condemnation" to say "PROVIDED, HOWEVER, THAT ANY PROPERTY ACQUIRED UNDER POWER OF EMINENT DOMAIN SHALL BE ACQUIRED FOR A PUBLIC USE UNDER THE STATE CONSTUITUTION OF 1963 AND THE LAWS OF THE STATE AND SHALL NOT BE ACQUIRED FOR TRANSFER TIO A PRIVATE ENTITY FOR THE PURPOSE OF ECONIMUC DEVELOPMENT OR ENHANCEMENT OF TAX REVENUES". The new paragraph in the bill would read as follows:

   Sec. 5 (2) The local legislative body may institute and prosecute proceedings under the power of eminent domain in accordance with the laws of the state or provisions of any local charter relative to condemnation; **PROVIDED, HOWEVER, THAT ANY PROPERTY ACQUIRED UNDER POWER OF EMINENT DOMAIN SHALL BE ACQUIRED FOR A PUBLIC USE UNDER THE STATE CONSTITUTION OF 1963 AND THE LAWS OF THE STATE AND SHALL NOT BE ACQUIRED FOR TRANSFER TO A PRIVATE ENTITY FOR THE PURPOSE OF ECONOMIC DEVELOPMENT OR ENHANCEMENT OF TAX REVENUES.** ~~The purposes contemplated by this act are hereby declared to be public purposes within the meaning of the constitution, state laws and charters relative to the powers of eminent domain.~~ **A** resident owner in a development area may **NOT** be dispossessed after condemnation under the provisions of this act until other adequate housing accommodations are available, to the people displaced.

Qualified Local Unit of Government:
"Qualified local unit of government" in statute means Core Communities. Using this term could limit the use of these acts tool to only the 103 core communities. This should be changed to "municipality" or some other term in order to prevent confusion regarding who can utilize these acts.

Fee Simple:
When communities acquire blighted property by condemnation, it is subject to existing easements. This would not be fee simple. They sometimes acquire at less than fee simple, such as when they acquire property that is subject to existing easements. If the language remains "fee simple" then the local would have to also condemn out and pay the enormous cost for the utility (phone or cable) to move the lines. Taking out the language would allow for the condemnation to happen but to work around the lines or to encase the lines. This happened in Grand Rapids recently – they did a condemnation action and went around Consumers' lines.

Public Purposes:
These bills will limit the use of eminent domain/condemnation for the purposes of these two statutes to only blighted properties – which means for non-blighted properties you would apparently need voluntary acquisition (gift or purchase) to secure the property and accomplish the purposes of the statutes. This is due to the removal of the language that the general purposes of the acts are "public purposes" permitting the use of eminent domain. If you can only use eminent domain in these acts for blighted parcels, that would be the only reason to remove this language.

We understand the need for some amendment to these statutes as they are "re-development" acts and as written would still at least seem to allow the use of eminent domain to acquire property that might be transferred to a third party -- something no longer permitted under Proposal 4 and the Hathcock case prohibiting the use of eminent domain for "private economic development." The problem with the language in the bill, though, is that it ignores the fact that both of these statutes also involve and encourage public improvements that have nothing to do with private economic development or the transfer of condemned property to third parties -- installing public utilities and lighting, building schools, parks, and libraries -- in the areas designated. The amendments remove references to acquiring property by way of eminent domain in these designated improvement areas even for these obvious public uses.

If these bills stand as written, a community would have to declare a "development area" or "neighborhood area" under these statutes in order to take advantage of their planning/financing benefits, but then would have to cite some other statute for the right to condemn property within the area for these obvious public uses (since they can't cite these anymore).

By taking out the references to the use of eminent domain for the public improvements authorized in them, landowners may decide to argue that the intent of the legislature must surely have been to limit the use of eminent domain in these specifically declared and designated areas to blight removal only, and for no other purpose regardless of how traditionally public it is. If the court reviewing that argument views its main task as diagramming the sentences used by the legislature here, it is possible for that argument to prevail. This language would be much more limiting than Proposal 4 and Hathcock, and would be a huge problem for economic development through public projects which is a necessary tool for local communities to redevelop.

Instead, the MML recommends removing the language specifying that this act is for blighted area only and, instead, clarifying that any property acquired under eminent domain under this act be only for public use and not for private use as prohibited by the constitution.